

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

SAS ASSOCIATES 1, LLC, *et al.*,

Plaintiffs,

v.

Case No: 2:21-cv-00491

**CITY COUNCIL FOR THE CITY OF
CHESAPEAKE,**

Defendant.

DEFENDANT’S RULE 12(B)(6) MOTION TO DISMISS

The Defendant City Council for the City of Chesapeake (“City Council”), by counsel, and pursuant to Federal Rule of Civil Procedure 12(b)(6), moves this Court for dismissal of the Plaintiffs’ Complaint (Doc. 1).

1. Count I of the Complaint (Equal Protection Violation) fails to state a claim upon which relief may be granted because:
 - a. The City Council had a rational basis, stated on the record and reiterated in the Complaint, for denying the Plaintiffs’ rezoning application.
 - b. The Plaintiffs failed to adequately plead that the City Council purposefully and intentionally discriminated against them.
 - c. The Plaintiffs failed to identify any “similarly situated” property owners who were approved for similar rezoning applications.
2. Count II of the Complaint (Violation of Virginia Code § 15.2-2208.1) fails to state a claim upon which relief may be granted because:

- a. Count II is time barred. Challenges under Virginia Code § 15.2-2208.1 must be filed within 30 days of the City Council's decision. This lawsuit was filed approximately 19 months after the City Council's decision.
 - b. The Plaintiffs failed to identify any unconstitutional condition in their Complaint that the City Council required of them.
3. Count III of the Complaint (Declaratory Judgment) must be dismissed because the alleged wrongful conduct of the City Council has already occurred. As such, a declaratory judgment would not guide the future conduct of the parties and is superfluous with Plaintiffs other causes of action.

CONCLUSION

For the foregoing reasons, and those stated in the brief in support of this motion, filed contemporaneously herewith, the City Council respectfully requests that this Honorable Court enter an Order dismissing this case.

Respectfully submitted,

**CITY COUNCIL FOR THE CITY OF
CHESAPEAKE, VIRGINIA**

By: _____ /s/_____
Daniel J. Wisniewski
Assistant City Attorney

Jacob P. Stroman, City Attorney (VSB No. 31506)
Daniel J. Wisniewski, Assistant City Attorney (VSB No. 84624)
OFFICE OF THE CITY ATTORNEY
City of Chesapeake
306 Cedar Road
Chesapeake, Virginia 23322
Telephone: (757) 382-6586
Facsimile: (757) 382-8749
jstroman@cityofchesapeake.net
dwisniewski@cityofchesapeake.net

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2021, I filed the foregoing Motion to Dismiss with the Clerk of the Court, and served the same on Plaintiffs' counsel, using the CM/ECF system.

_____/s/_____
Daniel J. Wisniewski, Esq.